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Paper No. 6

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**AUG 23 2002**

**OFFICE OF PETITIONS**

In re Application of :  
Dwyer, et al. :  
Application No. 09/780,946 : ON PETITION  
Filed: February 9, 2001 :  
Attorney Docket No.: 1067-US :  
For: SYSTEM AND METHOD FOR :  
PERMITTING MAINTENANCE OF PRIVACY :  
OF MAIN NUMBER ASSIGNED TO WIRELESS :  
DEVICE :

This is a decision on the petition, filed January 2, 2002 (Certificate of Mailing date of October 19, 2001) under 37 CFR 1.182, and alternately under the provisions of 37 CFR 1.182 and 37 CFR 1.183, requesting that figure 4 be added to the above-identified application and that the application be accorded a filing date of February 9, 2001.

The application was filed February 9, 2001 as a continuation of U.S. application No. 09/658,001. On March 19, 2001, the Office of Initial Patent Examination mailed a Notice to File Missing Parts of Nonprovisional Application ("Notice") stating that the application had been accorded a filing date of February 9, 2001, but that the following items were missing: the statutory basic filing fee and an executed oath or declaration. Applicant was give a two (2) month period of time, extendable under 37 CFR 1.136(a), to submit the missing items and supply a surcharge for late submission of an executed oath or declaration.

The Notice further stated that Figure 4 described in the specification appeared to have been omitted.

The Notice set forth a two (2) month non-extendable period of time for applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

A response to the Notice along with a five (5) month extension of time was received January 15, 2002 (Certificate of Mailing date of October 19, 2001). The filing fees, declaration, and surcharge

were accepted as having been timely submitted October 19, 2001.

However, the petition to accept figure 4 as having been present upon filing of the application is hereby **DISMISSED AS UNTIMELY**.

The Notice set a specific period of time for reply with regards to the missing figure. The Notice stated that a reply was due within two (2) months of the mail date of the Notice and that this two (2) month period of time was not extendable under 37 CFR 1.136(a) or (b).

Failure to take a particular action within a specified time is a loss of rights in regard to the particular matter. See, MPEP 710.02(d). The result of failure to respond to the matter of the missing figure within two (2) months from the mail date of the Notice is accordance of a filing date of deposit of the application papers in the PTO, and, the original application papers (i.e., the original disclosure of the invention) will include only those application papers present in the PTO on the date of deposit.

Accordingly, as the instant petition requesting that figure 4 be added to the above-identified application and that the application be accorded a filing date of February 9, 2001 was submitted more than two (2) months from the mail date of the Notice, the reply is deemed untimely.

It is, however, noted that the application transmittal letter and specification filed with the application identified this application as a continuation of prior application No. 09/658,001 and specifically incorporated by reference the disclosure of the prior application. An applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. See, MPEP 201.06(c).

In view of the incorporation by reference of the prior application, figure 4 is not new matter if it was a part of the disclosure of the prior application.

Petitioner submitted petition fees in the amount of \$260.00, however, new drawings may be entered by the primary examiner without petition so long as the new drawings contain no new matter. See, MPEP § 608.02(a). Petitioner may request a refund of the petition fees submitted with regard to this matter by writing to the Office of Finance, Refund Section. A copy of this letter should accompany any such request.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of February 9, 2001 with an indication in Office records that 3 sheets of drawings were present on filing.

Thereafter, the application will be forwarded to the appropriate

group art unit for consideration by the examiner of the petition filed January 15, 2002 (Certificate of Mailing date of October 19, 2001), as a preliminary amendment requesting the entry of a new sheet of drawing.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.



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